WP(C) 1485/2005
BEFORE
THE HON'BLE SMT. JUSTICE B.K. SHARMA

JUDGMENT AND ORDER

The matter relates to payment of compensation on account of death due to electrocution. Both the writ petition being on the set of facts and the relief prayed for also being the same, they have been heard together and are being disposed of by this common judgment and order.

2. The petitioners are the father and wife respectively, of the deceased persons, on whose death, the claim has been made for payment of compensation. While in the first writ petition, the petitioner is the father of the deceased, in the second writ petition, the petitioner is the wife of the deceased.

3. As per the story narrated in the writ petitions, the deceased namely Shirajul Ali and Asgar Ali @ Askar Ali, were the temporary employees of the organization called Meghalaya Ispat Limited in the district of Ri-bhoi, Meghalaya. On 25.4.2003, the Meghalaya State Electricity Board (MSEB) personnel were engaged in connecting a high tension electric wire to a post infront of Meghalaya Ispat Limited. Seeing the deceased employees coming out from their worksite during break hours at about 1.30 PM, the MSEB personnel requested them to render assistance to pull the wire. According to the petitioners, inspite of the refusal to do the work, the MSEB personnel forced them to do so. Accordingly, the said deceased employees engaged themselves in the work for about half an hour. Suddenly, the wire became live, and consequently the deceased died on the spot being electrocuted. It has been asserted that the incident occurred due to the negligence of the MSEB.

4. According to the petitioners, the deceased were aged about 22 and 42 years respectively. After the incident the police registered UD case No. 3/2003 and forwarded the dead bodies to CHC, Nongpoh on the same day for postmortem. The postmortem was conducted on 26.4.2003 and the cause of death was reported as high voltage electric burn .

5. According to the petitioner, the deceased used to earn Rs. 60,000/- per annum at monthly rate of Rs. 5000/- being the temporary employee of the aforesaid Meghalaya Ispat Limited. Attributing negligence to the MSEB, the petitioners approached the MSEB by filing representations on 8.10.2003 and 26.9.2003 respectively, claiming compensation to the tune of Rs. 15 lakhs each. Repeated persuasions including service of legal notice having not yielded any result, they have invoked the writ jurisdiction of this Court by filing the instant writ petitions.

6. The respondents have filed their counter affidavit in WP(C) No. 1485/2005 denying the contentions raised in the writ petition. As per the affidavit, the work was being executed with proper care after shutting off power supply to the Low Tension Line. The work involved was removal of 11 KV Fuse Barrel from the 11 KVDO Fuse Unit fitted against the 11/0.4 KV 63 KVM sub station feeding the said Low Tension Line. As per the affidavit, the works commenced at about 11.30 AM on 25.4.2003 and seeing the employees of the MSEB engaged in the work, few employees including the deceased of their own engaged themselves in the work. According to the respondents, there was not even any request, not to speak of forcing the said employees to do the work.

7. According to the respondents, although the power supply was snapped before engaging in the work, but due to sudden strong wind and heavy rain coupled with lightning and thunder, another line (11 KV) in the vicinity although separate

d by sufficient clearance/distance, got snapped alongwith the shut off Low Tensi on Line (LT Line) on which the work was in progress. As a result, the shut off L T Line touched by the other line became live and as a result the persons engaged in the work suffered injury and the deceased employees died on being electrocut ed.

8. According to the respondents the mishap occurred due to the reasons beyo nd human control and not due to any negligence on the part of the MSEB personnel . As regards the claim of the petitioners for payment of compensation, the stand taken is that since the deceased volunteered for the job, the MSEB is not liabl e to pay any compensation. Their further case is that if the deceased were the e mployees of Meghalaya Ispat Limited and they having rendered their volunteer ser vice to MSEB during the course of employment, at best the liability would be of the employer.

9. In paragraph 5 of the affidavit, the respondents have stated that the au thority of the Board made several attempts to contact the petitioners for identi fication including identification of the Right Thumb Impression (RTI) to verify the contents of illegible Gaon Panchayat's certificates submitted by the petitio ners in support of the claim of compensation. The petitioners were asked to repo rt to the Board officials, but inspite of repeated endeavor, the petitioners did not show any response. In paragraph 6 of the affidavit, the respondents have st ated that the petitioners' representation while were under examination and scrut iny, they filed the writ petitions. From the tenor of the stand of the responden ts, their case is that the incident being the result of act of god and there bei ng no negligence, the petitioners are not entitled to any compensation.

10. I have heard Mr. S. Bora, learned counsel for the petitioners as well as Mr. A. Sarma, learned Advocate General, State of Meghalaya assisted by Ms. S. S arma, learned counsel representing the respondents. While Mr. Bora has placed re liance on the decisions as reported in AIR 1987 SC 1086 (M.C. Mehta Vs. Union of India); (2002) 2 SCC 162 (M.P. Electricity Board Vs. Shail Kumari); (2006) 2 GL R 387 (Surya Das Vs. A.S.E.B.) and 2004 Supp (GLT) 406 (Ajit Deka Vs. A.S.E.B), Mr. Sarma, learned AG, Meghalaya has placed reliance on the decision of the Apex Court reported in (2005) 6 SCC 156 (SDO, Grid Corporation of Orissa Ltd. Vs. Ti muda Oram).

11. From the pleadings what has transpired is that there is dispute relating to engagement of the deceased in the works executed by the MSEB. While accordin g to the petitioners, the deceased were forced to work, according to the respond ents they had volunteered for the work. Further, according to the respondents, t he incident occurred due to sudden thunderstorm and heavy rain coupled with ligh tning and thunder. Further stand of the respondents is that the particular line on which the work was being carried out was duly shut off, but the same got elec trified due to the act of God. These are all disputed questions of fact, which c annot be decided in writ jurisdiction.

12. Coupled with the above, the respondents have also questioned the very id entity of the petitioners. As per their stand, inspite of repeated efforts being made, the petitioners could not be contacted. Their identifications also could not be ascertained. Although, the counter affidavit speaks of RTI of the petitio ner in WP(C) No. 1485/2005, but from the writ petition, it is found that the pet itioner has signed the Vakalatnama and the affidavit in Assamese. Further, accor ding to the respondents, when the matter was under their scrutiny and examinatio n, the petitioners filed the instant writ petitions.

13. The decisions on which, Mr. Bora, learned counsel for the petitioners ha s placed reliance speak of liability to pay compensation in case of death or inj ury due to the negligence of a party. The decisions emphasized the obligation of the wrongdoer even in case of negligence to compensate for the harm caused to t

he victim.

14. On the other hand, the decision on which Mr. Sarma, learned AG, Meghalaya has placed reliance, while speaking on the principle relating payment of compensation under public law, has pointed out the circumstances in which the party against whom, the compensation is claimed may not be liable. Referring to the earlier decision in Chairman, Grid Corpn of Orissa Ltd, reported in (1999) 7 SCC 298, the Apex Court held that in view of denial of the appellants that there was any negligence on their part in performance of its duty, awarding of compensation under Article 226 of the Constitution cannot be justified.

15. In the aforesaid case of Chairman Grid Corpn, the Apex Court observed thus:

> The High Court committed an error in entertaining the writ petitions even though they were not fit cases for exercising power under Article 226 of the Constitution. The High Court went wrong in proceeding on the basis that as the deaths had taken place because of electrocution as a result of the deceased coming into contact with snapped live wires of the electric transmission lines of the appellants that 'admittedly/prima facie amounted to negligence on the part of the appellants'. The High Court failed to appreciate that all these cases were actions in tort and negligence was required to be established firstly by the claimants. The mere fact that the wire of the electric transmission line belonging to appellant 1 had snapped and the deceased had come in contact with it and had died was not by itself sufficient for awarding compensation. It also required to be examined with the wire had snapped as a result of any negligence of the appellants and under which circumstances the deceased had come in contact with the wire. IN view of the specific defences raised by the appellants in each of these cases they deserved an opportunity to prove that proper care and precautions were taken in maintaining the transmission lines and yet the wires had snapped because of circumstances beyond their control or unauthorized intervention of third parties or that the deceased had not died in the manner stated by the petitioners. These questions could not have been decided properly on the basis of affidavits only. It is the settled legal position that where disputed questions of facts are involved a petition under Article 226 of the Constitution is not a proper remedy. The High Court has not and could not have held that the disputes in these cases were raised for the sake of raising them and that there was no substance therein. The High Court should have directed the writ petitioners to approach the civil court was it was done in OJC No. 5229 of 1995.

16. Similar view was taken by the Apex Court in the case of W.B. SEB Vs. Sachin Banerjee, reported in (2002) 2 SCC 162. In the said case, the Apex Court has observed thus:

> The only grievance of the petitioners relates to a observation in the impugned judgment that two victims had died because of the negligence of the petitioner State Electricity Boar. Looking to the fact that the two victims were electrocuted because of an illegal hooking for the purpose of theft of electricity, the petitioner cannot be held guilty of negligence although they may have stated that there is a need for conducting dehooking raids more frequently.

17. The tests and principles involved in the decisions will have to be applied upon ascertaining the real fact. From the affidavit, it appears that the respondents were engaged in the task. Thus, in my consideration opinion, it will be appropriate for the MSEB to take a decision in the matter, upon taking such evidence as may be required towards ascertaining the real fact including the identity of the petitioner, based on which the questions relating to payment of compensation and the amount thereof will have to be decided.

17. To facilitate the above exercise, the petitioners may approach the respo

ndent No. 3, whose office is located bordering Assam. Upon such approach being made by the petitioners, the said respondent upon proper scrutiny and examination of the matter arrive at a decision in accordance with law. If the petitioners approach the said authority within 45 days from today, the said authority shall decide the matter with proper scrutiny and verification and upon consultation with the higher authorities, who in turn will render all necessary help to resolve the issue. Entire exercise shall be carried out within four months from the date of approach being made by the petitioners. The petitioners may also produce the relevant documents to facilitate scrutiny of the matter as aforesaid.

18. With the above direction, the writ petitions are disposed of leaving the parties to bear their own costs.